

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

SIERRA CLUB,

Plaintiff,

V.

CITY OF HOLLAND and HOLLAND
BOARD OF PUBLIC WORKS,

Defendants.

Case No. 1:08-cv-1183
Hon. Paul L. Maloney

**PLAINTIFF’S FIFTH MOTION FOR PARTIAL SUMMARY JUDGMENT
REGARDING EMISSION INCREASES FROM FOUR MODIFICATIONS MADE TO
THE DE YOUNG PLANT UNDER THE “ACTUAL TO POTENTIAL” TEST**

Plaintiff, Sierra Club, by its attorneys, moves pursuant to Fed. R. Civ. P. 56 for partial summary judgment finding as a matter of law that:

- (1) that, as a matter of law, the proper test for calculating emissions increases from four projects undertaken at the James De Young power plant, enumerated below, is the “actual to potential” test; and
- (2) that, as a matter of undisputed fact, the following major modifications undertaken by the City of Holland and Holland Board of Public Works (collectively, the “Defendants”) of the James De Young Plant resulted in significant net increases in emissions, as follows:
 - A. Project 1, the retubing of waterwalls and two superheater tubes in Unit 4 of the James De Young Plant in 1988, resulted in a significant net increase in emissions of NO_x, SO₂, PM, and PM₁₀. Project 5, the replacement and retubing of the condenser in Unit 3 in 1993, resulted in a significant net increase in emissions of NO_x, SO₂, PM, and PM₁₀ under the “actual to potential” test.

- B. Project 9, the retubing of the superheater in Unit 4 of the James De Young Plant in 1997, resulted in a significant net increase in emissions of NO_x, SO₂, PM, and PM10 under the “actual to potential” test.
- C. Project 10, the retubing of the condenser in unit 5 of the James De Young Plant in 2000, resulted in a net significant increase in emissions of SO₂, PM, and PM10 under the “actual to potential” test.

The grounds for this motion are set forth in the accompanying brief in support of its motion.

WHEREFORE, Sierra Club respectfully requests that the Court grant partial summary judgment ordering that the appropriate test to apply for calculating emission increases under the facts of this case is the actual-to-potential test, and that the projects enumerated above resulted in net significant increases of emissions.

Respectfully submitted on March 15, 2011.

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